

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-208088

DATE: January 18, 1983

MATTER OF: Atterton Painting, Inc.

DIGEST:

1. Agency rejection of low bid based on mistaken interpretation of specification was reasonable despite bidder assertion that no error was made, where the bid in question was substantially below the Government estimate and clearly unreasonable under the circumstances even though the bid was responsive on its face.
2. An obviously erroneous bid cannot be accepted although the bid price is verified after bid opening. Any other view would give the ostensible low bidder an option to either withdraw its bid, request a correction in its bid, or insist upon the correctness of its bid despite ridiculously low prices.
3. Specifications are not ambiguous where chart included in IFB clearly showed three coats of paint, with paint specification numbers, were required. Protester's assertion that only two coats were required because specification did not use terms regularly used in trade is unreasonable.

Atterton Painting, Inc. (Atterton), protests the award of a contract to the Shawnee Painting & Sandblasting Co. (Shawnee), by the Naval Facilities and Engineering Command for the interior painting and replacement of broken glazing for Crane 28 at the Puget Sound Naval Shipyard, Bremerton, Washington, under invitation for bids (IFB) No. N62474-82-B-2283.

Six bids were received and opened on May 10, 1982. The three lowest bidders were:

SeaTac Painting Co.	\$ 24,990
Atterton Painting, Inc.	\$ 79,500
Shawnee Painting & Sandblasting Co.	\$157,300

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Since the Government estimate for the work was \$221,000, the contracting officer requested that SeaTac Painting Co. (SeaTac), review its bid because of the great disparity between its bid and the Government estimate. In response, SeaTac sought and was permitted to withdraw its bid upon a showing of a mistake in computation.

The contracting officer specifically requested Atterton to confirm its bid; Atterton did so and verbally agreed to do all the work required by the IFB for its bid price. Concerned that the work would not be accomplished at the bid price of \$79,500, the contracting officer convened a preaward conference. At the preaward conference Atterton was informed by Government representatives that the requirements as specified in the contract required three coats of paint, namely spot primer, top coat and finish coat. Atterton stated that it had interpreted the specifications to require spot primer and a top coat based on the opinion that "top coat" and "finish coat" as those terms are interpreted in the trade are synonymous. Atterton was then asked if it wished to claim a mistake and withdraw its bid. Atterton informed the contracting officer that there was no mistake and that it would be bound by its bid. The contracting officer mailed Atterton a letter rejecting its low bid and informing Atterton that the contract would be awarded to Shawnee, the next lowest bidder.

Atterton protested to our Office and requested a determination as to whether the rejection of its bid was proper and, if so, whether the specifications contained in the solicitation were ambiguous requiring denial of the award and readvertising of the procurement.

The record indicates that the contracting officer suspected there was an error in Atterton's bid. A contracting officer's responsibility thereafter is spelled out quite clearly in section 2-406.3(e)(1) of the Defense Acquisition Regulation (DAR) which provides in pertinent part:

"(1) In the case of any suspected mistake in bid, the contracting officer will immediately contact the bidder in question calling attention to the suspected mistake, and request verification of his bid. The action taken to verify bids must be sufficient to either reasonably assure the contracting officer that the bid as confirmed is without error or elicit the anticipated allegation of a mistake by the bidder. To insure that the bidder concerned will be put on

notice of a mistake suspected by the contracting officer, the bidder should be advised, as is appropriate of (i) the fact that his bid is so much lower than the other bid or bids as to indicate a possibility of error, (ii) important or unusual characteristics of the specifications, (iii) changes in requirements from previous purchases of a similar item, or (iv) such other data proper for disclosure to the bidder as will give him notice of the suspected mistake. If the bid is verified, the contracting officer will consider the bid as originally submitted."

The facts and circumstances outlined above show that the Government made every effort in this case to put Atterton on notice of the possibility that its bid was in error, and gave it adequate opportunity to discover and allege any such error. Atterton was fully advised in accordance with the above-quoted regulation. The contracting officer properly determined that Atterton's bid was mistaken since the price for the work required was clearly unreasonable under the circumstances. See 51 Comp. Gen. 498 (1972). The general rule with regard to such a bid is that the contracting officer must reject it even if the bidder denies making a mistake. If it is apparent that an error indeed has been made, the bidder may not remain in contention for award--rather, the bid must be rejected. DAR § 2-406.3(e)(2), 51 Comp. Gen. 498 (1972). KenCom, Inc., B-200871, October 5, 1981, 81-2 CPD 275.

Concerning the alleged ambiguous specifications, it is Atterton's position that it read the specifications based upon the custom of the trade and its performance rendered under prior contracts for the requesting facility but that the Government is requiring more extensive performance than a reasonable interpretation of the specifications would allow. The disputed specifications regarding the preparation and coating (painting) of exterior surfaces provide, in pertinent part, as follows:

"6. PAINTING.

* * * * *

"6.3 Coating system shall be in accordance with Table I.

* * * * *

"6.5 Paint all previously painted exterior surfaces. Apply nonslip treatment on steel plate stair treads, walkways, and landing areas. No-slip treatment shall consist of a prime coat of MIL-P-24441 primer, one coat of MIL-P-24441 epoxy with a light coat of painters sand, then a second coat of MIL-P-2441 epoxy. Open grating walkway surfaces shall be painted as specified for ferrous metal.

"TABLE I

"EXTERIOR COATING SYSTEM AND INTERIOR OF ELEVATOR SHAFT

<u>Coating Number</u>	<u>Material to be Coated</u>	<u>Spot Primer</u>	<u>"Specification Numbers</u>		<u>Type</u>
			<u>Top Coat</u>	<u>Finish Coat</u>	
"1	Galvanized Metal	TT-P-641	TT-E-1593	TT-E-1593	Alkyd
"2	Ferrous Metal	TT-P-645	TT-E-1593	TT-E-1593	Alkyd
"3	*Steel (non-slip surface)	*MIL-P-24441/1	MIL-P-24441/2	MIL-P-2441/2	Epoxy

*Prime all surfaces to receive nonslip treatment."

Atterton interprets the above provisions to mean that nonslip surfaces required three coats of paint because of the language contained in 1P6.5 of the specifications but since no provision similar to 1P6.5 was contained in the specifications for ferrous or galvanized metal surfaces or language such as that commonly used in the trade to make clear that something other than a top or finish coat was required, the specifications are ambiguous.

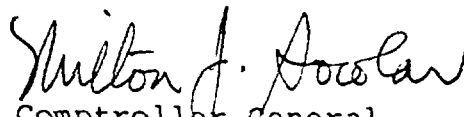
The mere allegation that something is ambiguous does not make it so. An ambiguity exists only if two or more reasonable interpretations are possible. B-165892, May 27, 1969. The inquiry then is whether the specifications caused such uncertainty that one might reasonably believe that only two coats of paint were required by the specifications.

We find Atterton's interpretation of the contract specifications to be unreasonable because it ignores the plan language of 1P6 and 1P6.5. The plain meaning of the

language contained in these two provisions, taken together, is that all painting required by the contract is to be performed in accordance with Table I. Upon examination of Table I in section 09910-4 of the specifications, it is apparent that both galvanized and ferrous metal in addition to steel (nonslip surface) are to receive a spot primer, a top coat and finish coat. That Table I lists for each coat the paint specification numbers of the paint makes it clear that three coats of paint are required. We find unreasonable Atterton's assertion that if more than two coats were required the specifications should have used words such as "intermediate coat," "second coat," or other words commonly used in the trade to make clear that something other than a top or finish coat was required.

We think the record in this case indicates that a reasonable basis exists to support the agency's rejection of Atterton's bid and, based on the foregoing, we find no basis upon which to reverse its decision.

Accordingly, the protest is denied.

for 
Comptroller General
of the United States